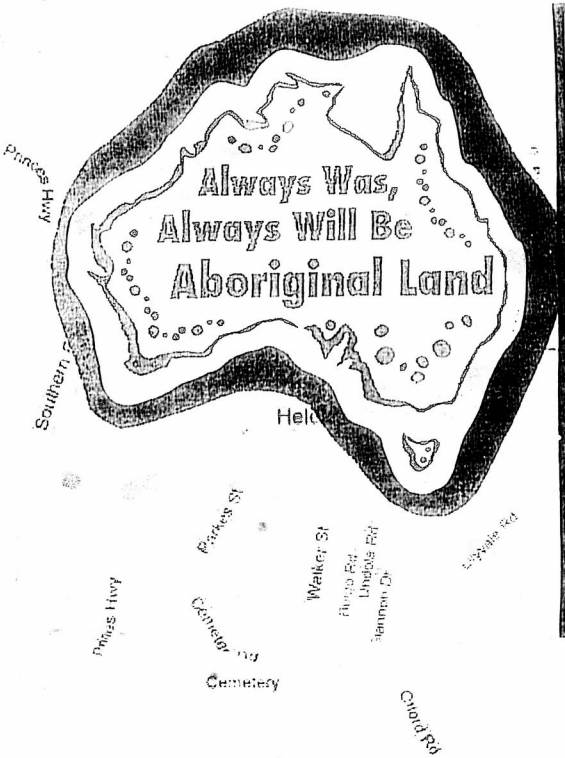
LEGALS ZINE

By

justice tracks collective,

for camp for climate action 2009



Acknowledgement of country
We recognise and pay respect to the Aboriginal nations and traditional owners of the land. We acknowledge the land was and always will be an integral part of the spiritual and cultural histories of Aboriginal peoples. We recognise that sovereignty has never been ceded.

This zine was created on the land of the Gadigal people of the Eora nation, and Climate Camp 09 will be held on Dharawal land. If you are reading this, you are on Aboriginal land.

About this zine
This booklet or 'zine' has been written and compiled by the Justice Tracks Collective. It aims to be a resource to help you make informed decisions about actions you may consider taking at Climate Camp 2009, a Nonviolent Direct Action Camp.

This zine should not be read as formal legal advice- it is intended to guide you through the legal aspects of direct action. It also explains the operation of legal support during and after Climate Camp.

About the Justice Tracks Collective
We are a collective of activists plus one emu (Esther) committed to the campaign for climate justice. See you at Climate Camp 09!

Emma, Gem, Mon, Oliver, Sally, Scarlet, Wenny and Zoe

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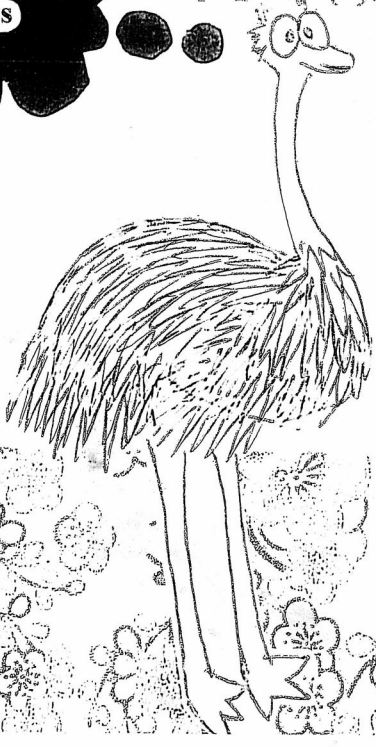
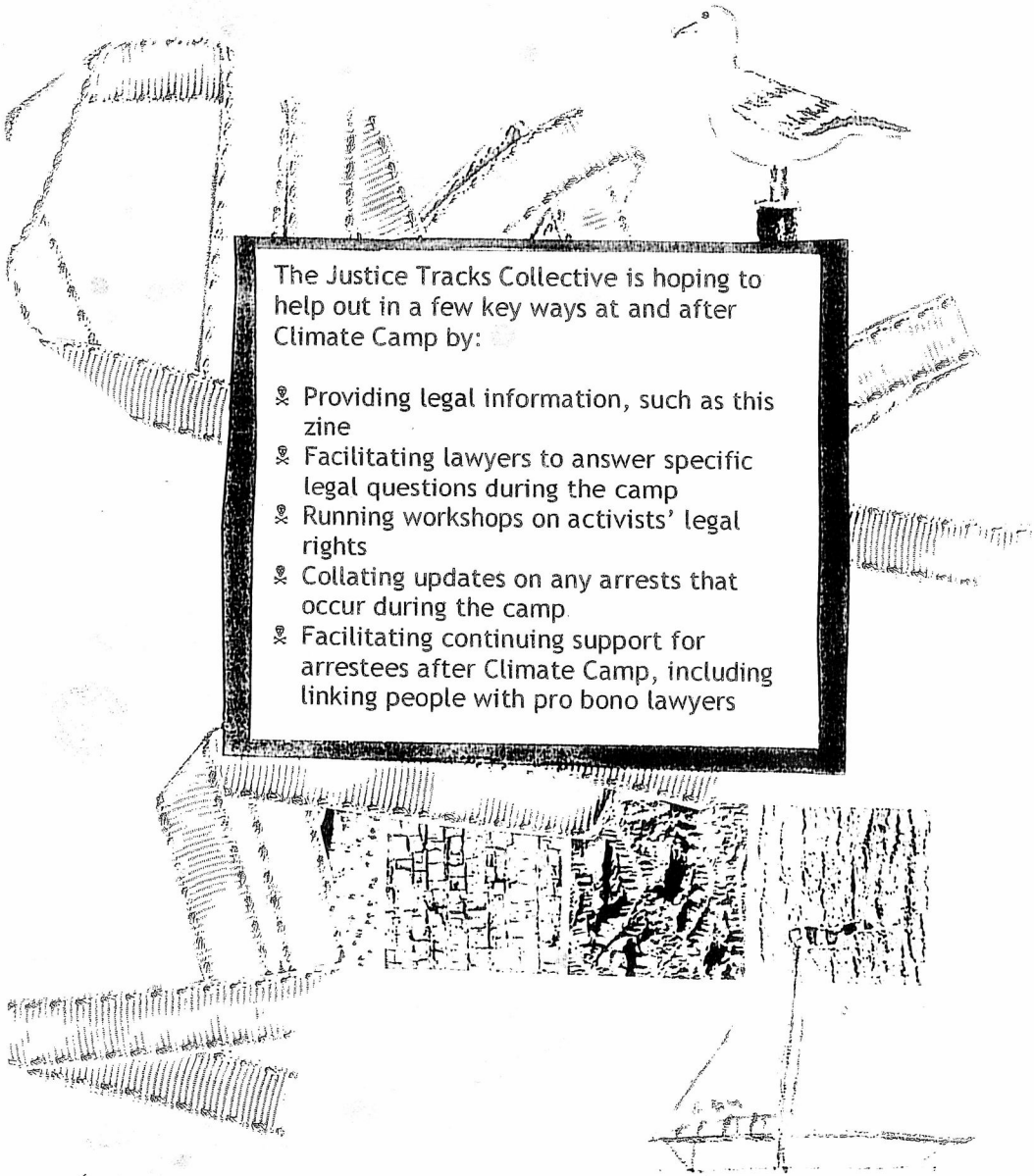
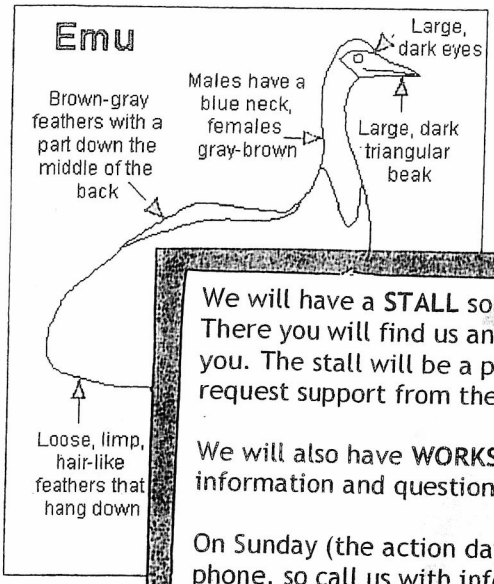


Legal Support at Climate Camp 09



The Justice Tracks Collective is hoping to help out in a few key ways at and after Climate Camp by:

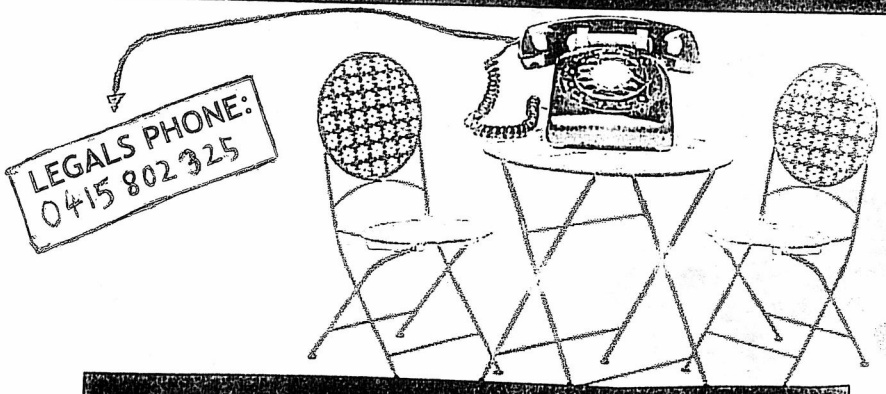
- Providing legal information, such as this zine
- Facilitating lawyers to answer specific legal questions during the camp
- Running workshops on activists' legal rights
- Collating updates on any arrests that occur during the camp
- Facilitating continuing support for arrestees after Climate Camp, including linking people with pro bono lawyers


Emu
Large, dark eyes
Males have a blue neck, females gray-brown
Brown-gray feathers with a part down the middle of the back
Large, dark triangular beak
Loose, limp, hair-like feathers that hang down

We will have a **STALL** somewhere at the Camp. There you will find us and some lawyers ready to talk to you. The stall will be a place to ask specific questions and request support from the collective.

We will also have **WORKSHOPS** with activist legal information and question time.

On Sunday (the action day) we will be roaming with the phone, so call us with info and news of arrests!



	FRIDAY	SATURDAY
At the Stall	2-4pm	10:30am-12pm 7:30-8:30pm
Workshops	4-5pm	9-10:30am (check open spaces board for the location)

WHY DIRECT ACTION?

Direct action can involve risking a breach of the law. But laws can be unjust or uphold unjust policies. Climate change, fuelled by coal, is threatening our water, our health, and the homes of millions of people worldwide. Yet governments and other power holders continue to do as little as they can get away with. This is criminal behaviour.

We can choose to say, 'Enough!' We can decide to work together and leverage the greatest political pressure we can. Direct action is direct political pressure, and cannot be ignored. It shows and dramatises the conflict: between dirty coal and profit, and clean renewable and people.

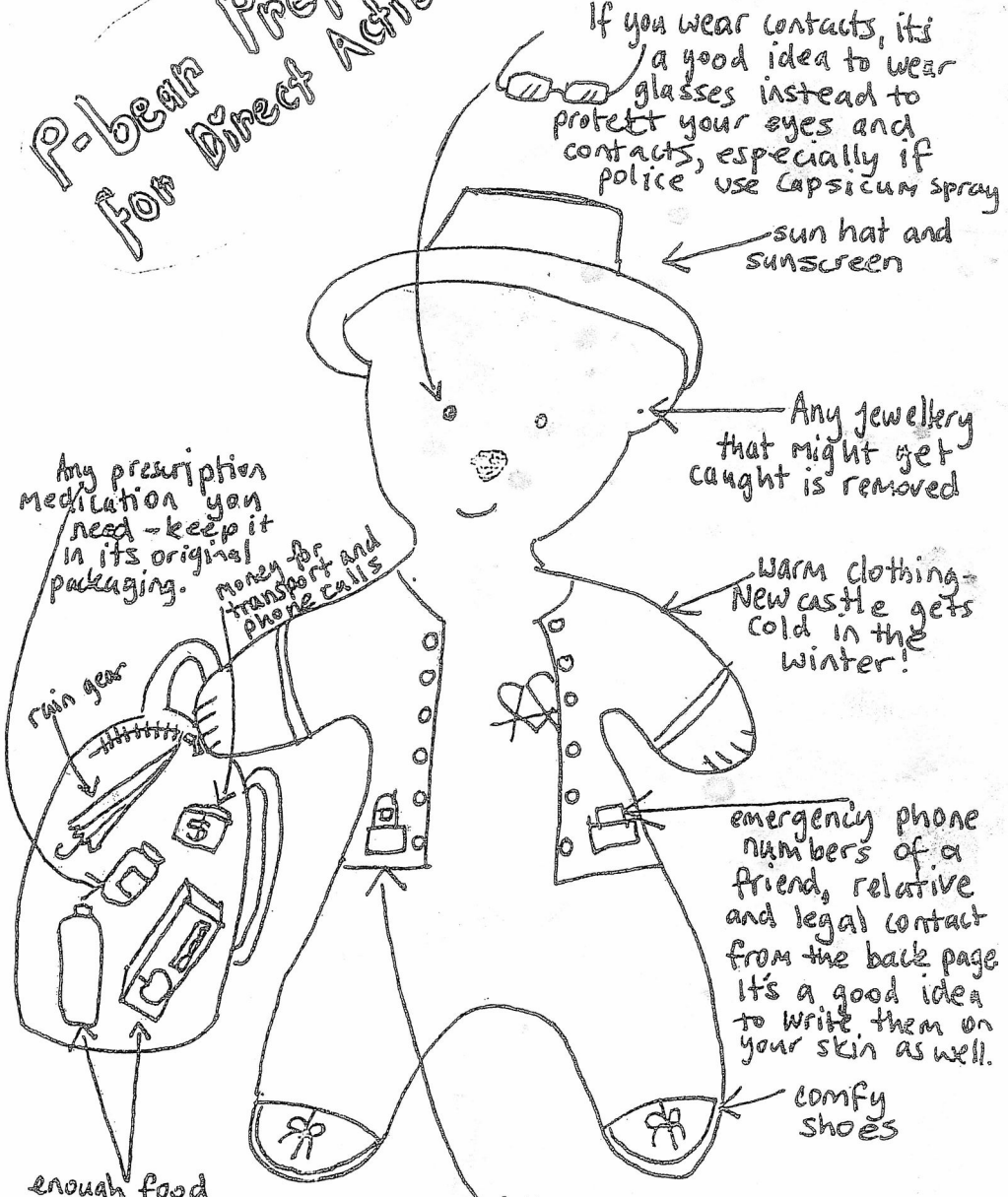
We inherit a rich history of successful direct action movements: Gandhi's salt march against British rule in India; the Jabiluka blockade 10 years ago that stopped a uranium mine being built in the Kakadu National Park in the Northern Territory; and many, many others. These movements followed a philosophy of nonviolent direct action that is about strategic, organised resistance to end the violence of profiteers.

Direct action does not only involve people taking action - there are many different and equally important roles in a successful direct action movement. Direct action is about utilising our collective skills and power to build a broad, sharp social movement that can win.

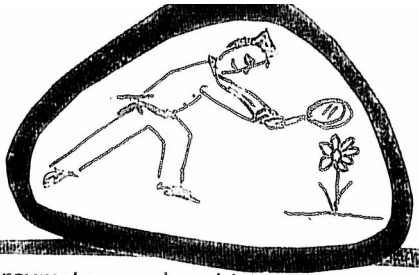
Now is our time to take direct action for climate justice and a living future. The Climate Camp '09 seeks to facilitate a direct action strategy embraced by a diverse, vibrant movement of people. It is the time to put words aside and take action together!

P-bear is a friend of Esther's

P-bear Prepares for Direct Action


If you wear contacts, it's a good idea to wear glasses instead to protect your eyes and contacts, especially if police use capsicum spray
sun hat and sunscreen
Any jewellery that might get caught is removed
Any prescription medication you need - keep it in its original packaging.
money for transport and phone calls
warm clothing - Newcastle gets cold in the winter!
rain gear
emergency phone numbers of a friend, relative and legal contact from the back page. It's a good idea to write them on your skin as well.
comfy shoes
enough food and plenty of water for the day.
fully charged mobile phone with credit

Police Searches



The law supposedly limits the circumstances in which the police can search you. In reality, it can be easy for the police to establish a "reasonable suspicion" that you have something on you, and it can be really difficult to say no to the police if they ask to search you. Many people 'consent' to searches without really knowing it.

It might be a good idea to talk with friends, your action team or the legals collective about some strategies for challenging the power that the police have and to think about how you can respond to their demands.

When can police lawfully search you?

- If you consent to being searched
- If you are under arrest
- If the police have a warrant to search you
- If you are within a declared "emergency lockdown zone" - see page 23
- If the police "reasonably suspect" that you have in your possession:
  - Stolen property or drugs
  - A 'dangerous implement' - this includes knives, guns and anything made or adapted to cause injury
  - Something intended to be used in connection with an indictable (serious) offence (e.g. a weapon suspected of being used in a robbery)

NB: If the police find any of these 'prohibited' items, they can seize them.

The police can search your car if they "reasonably suspect":

- You have stolen property or drugs or there's a 'dangerous implement' in your car
- The car was used in relation to an indictable (serious) offence or to a weapons offence
- That "circumstances exist" that are likely to give rise to a serious risk of public safety and that searching the car would lessen that risk.

How can police perform a search?

The police *can't:*

- search and question you at the same time.

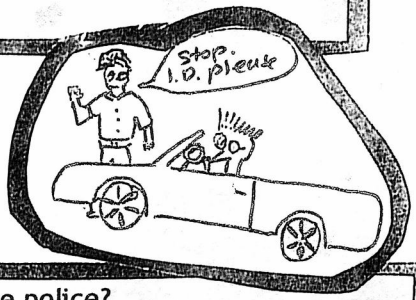
The police *should:*

- as much as "reasonably practicable", conduct searches by someone of the same gender. Searches should also be done in private.

The police *can:*

- Ask you to open your mouth, shake your hair, or take off your shoes and jackets
- Pat you down
- Do a strip search if they are "reasonably" satisfied that the "seriousness and urgency of the circumstances require" a strip search.

I.D. Stuff



Do you have to give your name to the police?

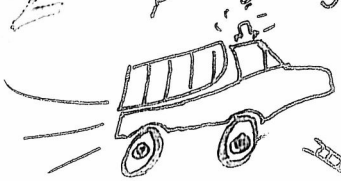
There is **NO** general law in NSW that requires you to identify yourself to a police officer. This means that you are free not to give your name and address, unless one of the exceptions exist.

Exceptions are if:

- You're under arrest
- You're driving a car or are the passenger of a car
- You're under 18 and police suspect you of carrying or consuming alcohol in public
- Police suspect you of an offence on public transport
- Police are trying to serve you a warrant for defaulting a fine
- Police believe on reasonable grounds that you may have been a witness to an indictable (serious) crime
- Police suspect on reasonable grounds that an AVO (apprehended violence order) has been made against you
- 'Emergency powers' have been declared (see page 23)

Getting Arrested

2. A ride in the paddy wagon...



The police should tell you that they are arresting you and **why**. Three options here:

1. Off to the cop shop in the paddy wagon to get processed
2. Police might issue "Field Court Attendance Notices" so you skip the cop shop and go to court later on
3. They could issue on the spot **fines** like at Climate Camp 08 meaning: no cop shop and no court!

This whole arrest process should not go for more than 4 hours. However, this time doesn't include things like travel time to the station.

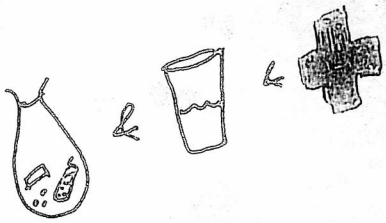
4. Charges

A few weeks later

& Bail

In the paddy wagon and at the cop shop- answering police questions

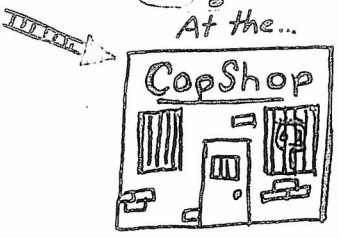
Except for giving your name and address, you have the right to remain silent. Be prepared for police to be persistent with their questioning. It's often best to keep saying "no comment" even to really obvious questions like "were you in Helensburgh today?" so it looks like you have nothing at all to hide or say.



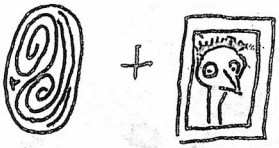
In Custody

At the cop shop, a person called the "custody manager" will take your belongings, document items, and then return your belongings after you've been processed. You have the right to things like water, "reasonable" refreshments and medical attention. If you need any of these things, ask the custody manager.

3. At the...



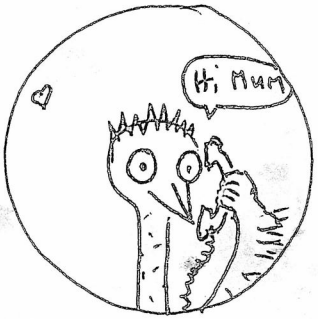
The police will take your:



But, you can later ask for your fingerprints and photograph to be destroyed if you are found not guilty or you get a 'section 10'- that is, you are found guilty but let off without a conviction.

You have a right to **communicate** with a friend or relative *and* a lawyer. You can ask them to attend the station and if they do, the police must take reasonable steps to allow you to talk to the person in private.

NB: if you are a "vulnerable person" e.g. under 18 or Aboriginal or Torres Strait Islander you have extra rights, like having a support person at the station.



Getting charged

The police may decide either to charge you or they may release you without charge:

- If **charged**, the police will give you a charge sheet of your charges, a fact sheet of their version of the alleged offence, and a Court Attendance Notice (CAN) to appear in court at a later date (usually 2-3 weeks later). Then you are released on bail (see below). The only situation in which you would not be released is if you are refused bail (see below); or

- If **released without charge**, this may be the conclusion of the matter or alternatively, you may receive a summons to appear in court at a later date.

Bail

Bail means an agreement between you and the police that you will appear in court on the specified date in the CAN. If you are charged with an offence, the police will then either release you on bail or refuse bail:

- There is **a presumption in favour of bail** for most offences. The police may impose certain bail conditions like not returning to the protest site where you were arrested.
    - **Refusing bail conditions:** You do not have to agree to the conditions of bail. However, if you do not agree, bail will probably be refused - see below. If you accept bail conditions, you can then decide to ask a court to vary the conditions of your bail
    - **Breaching bail conditions:** While you are on bail, it is an **offence** to breach any conditions of your bail agreement. Breaching a bail condition may result in a new offence and make it harder to get bail in the future

- **If bail is refused**, you will be brought before a local court as soon as "reasonably practicable." Thus if you are arrested late in the day and refused bail, you may be held overnight. When you are brought before court, you have the right to access a Legal Aid lawyer to represent you in an application for bail.

Esther goes to court

Once released on bail, you generally have two weeks before your first appearance in court (the date will be in the CAN). You should speak to your lawyer and decide whether or not you are going to plead guilty.

- **Pleading guilty:** If you plead guilty, then you will be sentenced on your first court appearance. This is the fastest way to resolve the court process but involves accepting any punishment the court decides to impose, unless you decide to appeal its decision. If it is your first offence, there are a number of possible outcomes. For instance, you may receive a fine or a 's10' (no conviction recorded).

- **Pleading not guilty:** If you plead not guilty, then your case will be resolved over a longer period of time. This will involve a number of court appearances. During this process charges may be dropped or new ones added. Depending on a number of factors, including the seriousness of the charge and the approach taken by the prosecutor or your lawyer, this process may take 6 months or longer. During this time you may be subject to ongoing bail conditions, but you will generally required only to appear in court for very brief periods every month or so.

Legal-related roles in Affinity Groups

An 'affinity group' is a group of people who come together because of one or more shared intentions. Each group may like to nominate people within the group to cover these legal-related roles.

1. Legal Support People

This could involve:

- Speaking with the group and seeing if people are feeling OK and informed about any legal questions for the group
- Keeping track of **arrests and locations** of people in your group during and after the action
- Being a **contact point** between the group and the JTC at Climate Camp
- Thinking about the following actions and how the group (not just you!) can make them happen:

  - **Cop-shop solidarity**: People being outside the cop-shop, ready with food and hugs for when friends are released. Occasionally this may also involve pressuring and nagging the police to make sure everyone is released everyone from custody.
  - **Court support**: Following up on what happens after the camp like how people are going with court processes. If there are court dates, making sure people will be there on the day to fill the courtroom and show support!
  - **Debriefing and evaluation**: Making sure the group has the opportunity to debrief and evaluate the action and how people worked together. This may include how the group interacted with legal issues and the group may like to share any lessons more broadly.

2. Police Liaison

A police liaison acts as a conduit of information between the group of people taking action and police - not as a decision-maker. Tips for the police liaison:

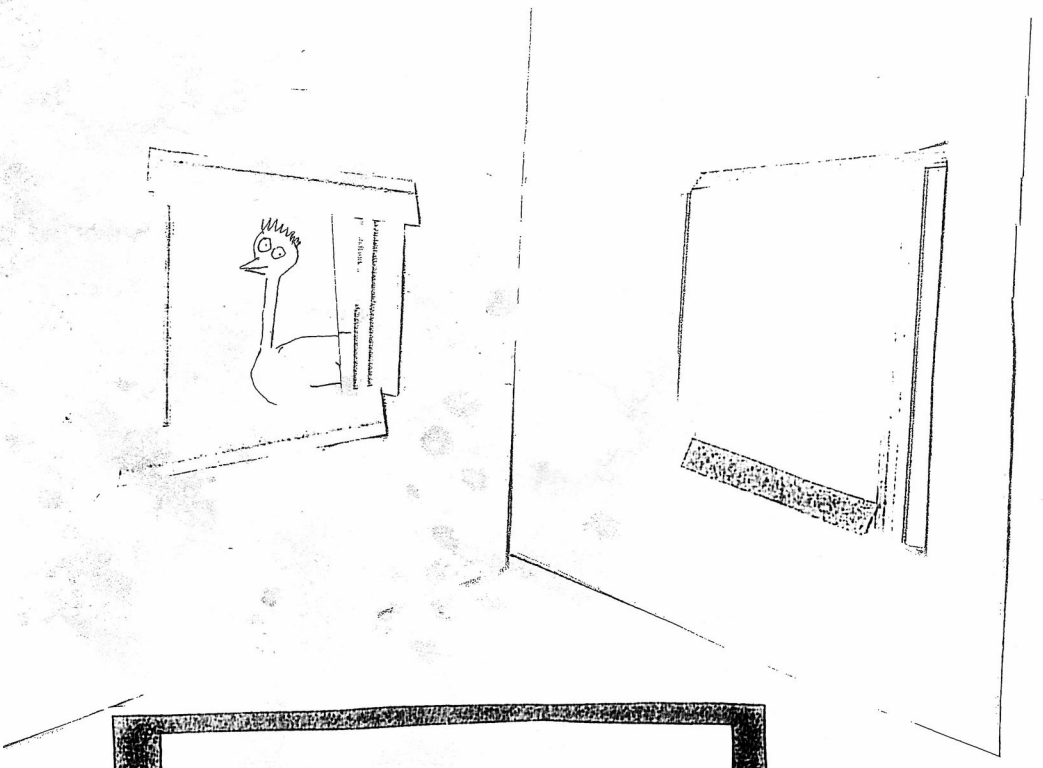
Before the action:

- One of your most important roles will be to try and **negotiate** with police in the interests of the people involved in the action. Make sure you've discussed your role within your affinity group, including your scope and limits in negotiating with police.
- Know important details of people in your group, including their full names, contact details, details of any contact people and their medical needs. Make sure you understand their boundaries and what they do and don't want shared with the police.
- Know your **legal rights** and the phone numbers of legal support.

During the action:

- Have a note pad and pen so that you can keep a record of events and police officers' names and actions
- You may like to identify yourself as the designated police liaison to police
- Be aware that you may be one of the first people arrested as you may be seen as a leader, no matter how much you try to tell the police otherwise
- Be professional and polite but on guard with police.

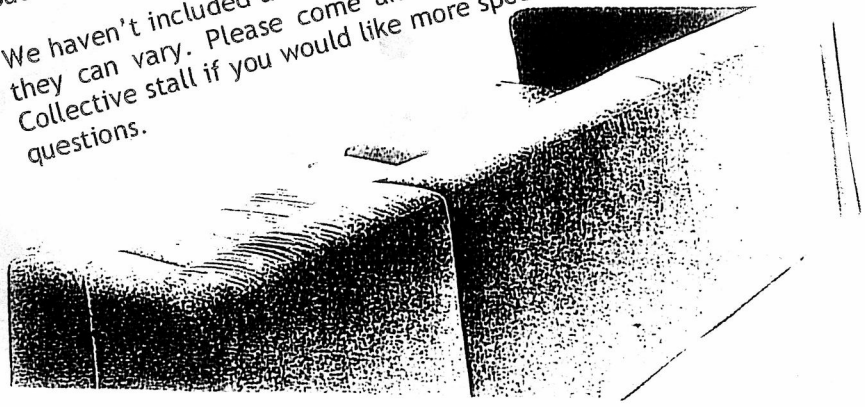
These are just some ideas for things legal support people could do - all to build a beautiful and safe culture of **support and caring** in the way we do direct action.



What might Esther be charged with?

The following pages go through some of the possible offences that activists may be charged with. Whether and what charges are laid depends on numerous factors including the kind of action being taken, but many are largely down to police discretion.

We haven't included all the penalties for the offences, particularly as they can vary. Please come and speak to us at the Justice Tracks Collective stall if you would like more specific information or have any questions.

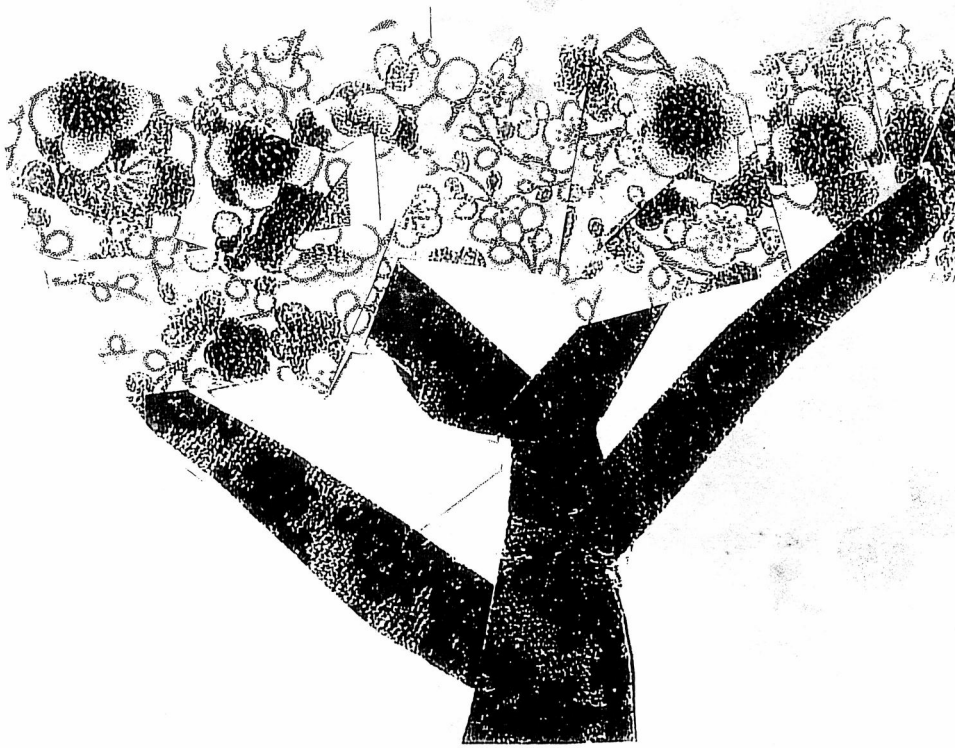


OFFENCES AT PROTESTS THAT CAN BE AVOIDED

Be wary of the following offences. Police often use them indiscriminately at protests and often they can be avoided.

Offensive language

It is an offence to use offensive language without a reasonable excuse in a public place; even if you don't think the language is offensive.



Possession of prohibited substances, knives or tools and spray paint

It is an offence to carry drugs, knives and spray paint. The chance of being searched at a rally is much higher, so you would be wise to avoid having these items on you during climate camp!

Hindering police and resisting arrest

It is an offence to resist or hinder a member of the police force in the execution of her/his duty, including the making of an arrest. 'Resist' means opposing by the threat or use of force. 'Hinder' means making an arrest or other police action more difficult. Whether or not lying down is 'resisting' is a grey area of the law.

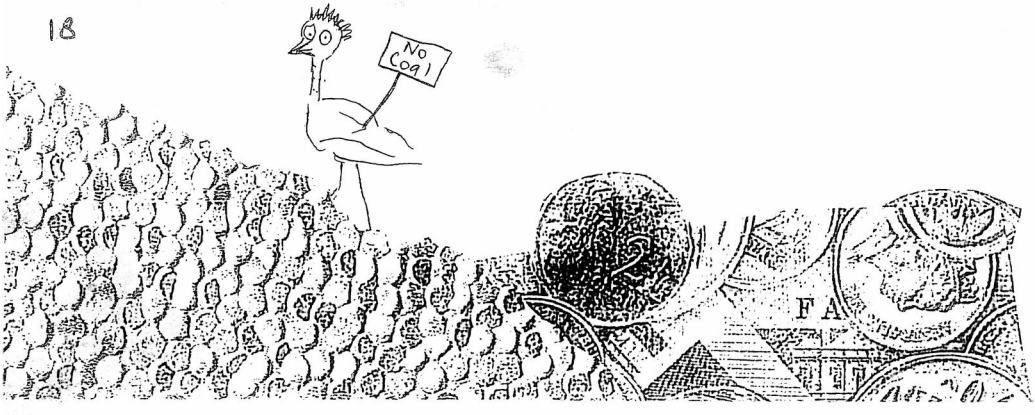
It is also an offence to incite someone else to assault, resist or hinder police. Incitement means to rouse, stimulate, urge or spur on, stir up or animate; it is not necessarily restricted to starting or initiating.

Assaulting police

Related to the offence of hindering police and resisting arrest is an offence to assault or wilfully obstructing police, and other officers, in the execution of their duty. Assault can be both physical and verbal. Therefore, threats of violence to police and other officers in the heat of the moment can have serious consequences. Attempting to cross police lines can also amount to assaulting police.

Disguises

Under the *Crimes Act*, it is an offence where a person 'has his face blackened or otherwise disguised, or has in his possession the means of blackening or otherwise disguising his [or her!] face, with intent to commit a felony or misdemeanour.'



SOME COMMON OFFENCES RELATED TO DIRECT ACTION

Trespass

Trespass is a very common public order offence often used against protestors and picketers. A person may be charged with trespass if s/he enters into 'inclosed lands' without lawful excuse or the consent of the person in charge of those lands, or who remains on those lands after being asked to leave.

'Inclosed lands' includes any lands, public or private, surrounded by a fence or barrier or even partially by a fence or barrier. 'Inclosed lands' also includes lands surrounded by a natural feature such as water.

The usual penalty for trespass is a $200 fine, but can be as much as 10 penalty units ($1,100).

Property damage

Property damage involves damaging property either intentionally or recklessly. The maximum penalty is increased to 7 years imprisonment if it occurs during a 'public disorder.'

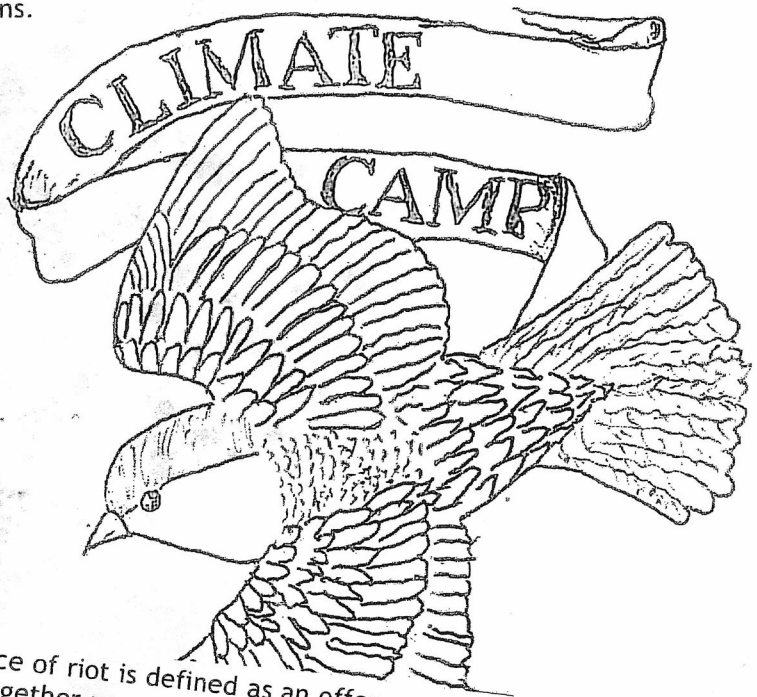
'Locking on' - that is, using some form of device to prevent your removal from a restricted area or a piece of machinery, has traditionally resulted in a charge of trespass. Recently, there have also been attempts to use 'malicious damage' or property damage as a further charge. However, these attempts have so far been unsuccessful.

Obstructing Traffic

This offence involves blocking the free passage of a person, vehicle or vessel in a public place.

UNCOMMON BUT POSSIBLE OFFENCES

These offences are sometimes used in the context of high profile demonstrations.



Riot

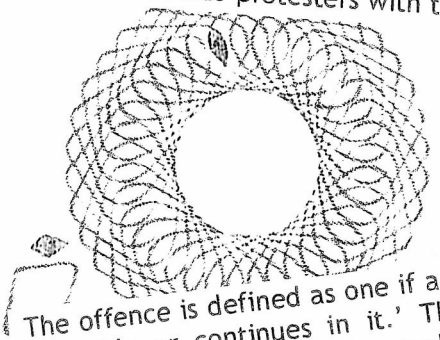
The offence of riot is defined as an offence where 12 or more persons present together use or threaten to use violence. Violence is defined broadly as including any violence towards property as well as persons. The maximum penalty for riot is 15 years imprisonment.

Affray

The offence of affray occurs where a person threatens or uses violence towards another person where a person of reasonable firmness would fear for their safety. The maximum penalty for affray was increased in the wake of the Cronulla Riots from 5 to 10 years.

Unlawful assembly

Charges for this offence have been very rare. However, it should be noted that it is still used. For instance, in Victoria the police charged a number of G20 protesters with this offence.



The offence is defined as one if a person 'knowingly joins an unlawful assembly or continues in it.' The maximum penalty is six months imprisonment for unlawful assembly. Yet, it is much more common for protesters to be changed with offences such as obstructing traffic.

Notice may be given of a public assembly to the Police Commissioner 7 days before the proposed event under the *Summary Offences Act* 1988 (NSW) s23. If the Commissioner does not oppose the assembly or the Supreme Court does not issue an order prohibiting the event, then it is an 'authorised assembly.' Just because an assembly is unauthorised doesn't necessarily mean that it is illegal; however authorisation means that the offences of unlawful assembly and obstruction are inapplicable.

Interfering with a mine

It is an offence to intentionally or recklessly:

(a) cause water to run into a mine

(b) destroy, damage or obstruct any shaft, passage, pit, airway, waterway or drain of, or associated with, a mine,

(c) destroy, damage or renders useless any equipment, building road or bridge belonging to a mine, or

(d) hinder the working of equipment belonging to a mine,

Conspiracy

The offence of conspiracy occurs when two or more people plan to commit a criminal offence or a tort.

Emergency Powers

Last year, the police declared a lockdown zone over 5 suburbs in Newcastle, which included the campsite, the protest route and nearby coal infrastructure. A number of activists' cars were searched, one activist's drugs were seized, whilst another activist was hit with expensive car defect notices. Many things were seized like poles used to hold up banners. The police even tried to confiscate a basket of oranges in case they became 'dangerous missiles'.

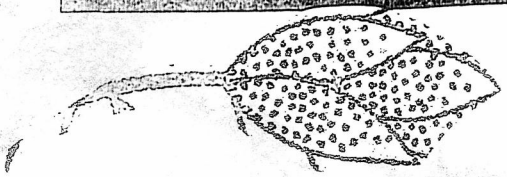
At last year's Climate Camp in Newcastle, the police used 'emergency' powers to "prevent or control a public disorder" (i.e. the extra police powers introduced after the Cronulla Riots in 2005). These powers give police a host of extra powers within the declared "lockdown zone".

It's possible that the police will use these 'emergency' powers again this year. If the police declare an 'emergency lockdown zone', the police have extra powers to:

- Establish road blocks and cordons;
- Stop and search people or vehicles - without needing to form 'reasonable suspicion';
- Get your name; and
- Direct groups to 'move on'.

It is an offence not to follow these orders. It might be a good idea to keep drugs, pocket knives etc at home.

Engaging with the law critically in your NVDA

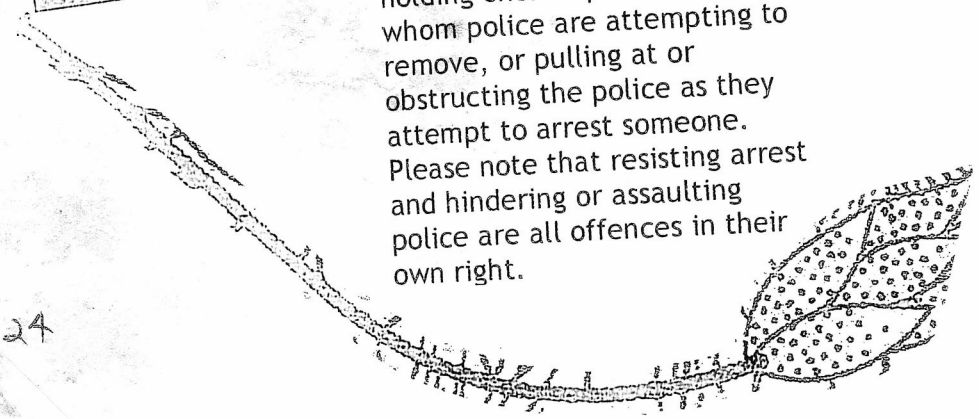


The law is often presented as fixed and reserved for lawyers, judges and the police. But police and judges are given wide-ranging discretion about how they enforce the law. They can often be erratic, or ignorant, conservative or angry. Sadly being informed about how the law works is not always enough. Essentially while knowing your rights, learning about the law and having a plan are great ideas, there will always be a degree of unpredictability.

However we don't have to sit on our hands or accept this chaos. Instead we need to do more than just know the law - we can have a plan to respond to its unpredictability and power. We can also be critical and creative in the way we engage with the law. Here are some ideas that may get you thinking around the mystique of law.

De-arresting

A group of people may decide, either in advance or in response to an attempted arrest, that they will act together to try and prevent that person being arrested. This may involve holding onto or pulling a person whom police are attempting to remove, or pulling at or obstructing the police as they attempt to arrest someone. Please note that resisting arrest and hindering or assaulting police are all offences in their own right.



De-escalation/escalation

The police are trained to control conflict. When they are asking people to be quiet and orderly, attempting to force people back or hitting people, they are attempting to manage the conflict in a way that suits them. Having a plan about how to respond to this conflict can help to retain your power in the situation. For example everyone sitting down and going silent may be the best way to respond to a push or police charge. Alternatively planning to link arms and push back may help you achieve your objectives. Recognising that conflict may occur and having a plan can make the difference between a successful and an unsuccessful action.

Non-cooperation

Non-cooperation is an attempt to collectively undermine the power of the police to control or manage a situation. Many people arrested at the Seattle protests in 1999 refused to give their details to police when being processed at the station, thus slowing down the process and frustrating police attempts to manage 1000's of arrests. Eventually they had to release many people without charge.

In 2008 at Australia's first ever Climate Camp over 1000 people rallied and blockaded train lines in Newcastle, the worlds biggest coal port. Trains were stopped and Coal exports for the week dropped 18%, with the arrests of 58 activists alongside local and national media coverage. The following story is the experience of a young woman taking part in her first direct action the day after the main rally at Climate Camp.

early in the morning we pile in cars, with large metal tubes and small chains around our ready wrists. we drive to kooragang coal port as dawn threatens pale at the edges of the sky. at the entry to the port a streetlight reveals a car with police prop-legged around it, their feet in it's open doors. i'm so scared our plans are about to stretch too thin and break. we get confused and drive past the site three times, u-turning in front of the police.

Last years Story

finally we pull up beside the fence and tumble out of the car. we go over the fence one by one. scrabbling with no foothold. an almost laugh. a hand scraped on barbed wire. we pass the heavy bits of pipe through the fence and walk quick across the bitumen together. no one comes to grab us, no one drags us down from the fence like i kept seeing in my head. we climb yellow metal steps, onto the machine that loads coal into ships, coal for burning in places distant. press with a flat hand all the big red emergency stop buttons, the conveyor belt winds slowly still and the sirens start. we keep frantically locking ourselves to bits of conveyor belt, changing our minds, changing place, and repeating. everyone else is calm now but i'm not. finally we are settled, feet dangling, knees brushing conveyor-belt rubber. we are locked with bits of pipe and now its easy, and i'm not scared anymore.

the machine is almost beautiful. draped with yellow lights in the almost fog and the sea sitting blackly close. the sun rises over the harbour and the cold air doesn't sting.

finally they find us. it's a little awkard. some of them are condescending, tell us all the lies they said they'd tell.

A worker, Dwayne, comes and chats with us. he's quiet and friendly and curious, it's his first time with protesters. he tells us to be careful, follow the ritual and we'll be okay.

the police are grumpy and not impressed. we smile politely, thank them, and refuse to do anything they ask. we wont lock off, thank you. we understand your concern, thankyou. good morning. etc. etc.

they search libby haphazardly. they lock off our friends. then they take apart the conveyor belt we are attached to. we apologise to the worker. he says its fine, smiling, he has nothing better to do.

they forget to search me, and put me in the paddywagon with a bag full of chocolate and an epi-pen. they recognise my novocastrian school jumper and chat with me about uni. i am lucky, processed by the nice cop, an ex youth worker. he makes sure we are ok, and never leaves us on our own. lib and sally dance in the back of the paddy wagon while they process me. they ask tony to put his number in front of his face so he does. the police man calls him a dickhead.

finally they are done and we get to ride home in an APEC bus. just the five of us, giggling up the back. it looks like my old school bus plus bars. it probably is. they take us back to camp, like school children, excited and back from a school excursion. a day well spent, and finally over.

legal contacts

contacting Justice Tracks Collective

ph. 0415 802325
email. info@justicetracks.org.au
and during climate camp, come by the Justice Track collective tent.
details on how to find us are on page 4 and 5.

other legal contacts

Legal Aid Helpline – 1300 888 529
Aboriginal Legal Service (Wollongong) – 4225 7979
Aboriginal Legal Service (Sydney) – 9318 2122
Young Offenders' Advice Line – 1800 101 810

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